

## The Honorable Robert J. Bryan

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,

CIVIL ACTION NO. 3:17-cv-05806-RJB

**Plaintiff,**

**LCR 37 EXPEDITED JOINT  
DISCOVERY MOTION TO COMPEL  
DEFENDANT GEO'S FINANCIAL  
DOCUMENTS**

THE GEO GROUP, INC.,

**ORAL ARGUMENT REQUESTED**

## **Noted for Consideration: Sept. 18, 2018**

## I. WASHINGTON'S INTRODUCTORY STATEMENT

The State of Washington (“Washington”) challenges The GEO Group, Inc.’s (“GEO”) longstanding practice of paying detainee workers that keep the Northwest Detention Center (“NWDC”) operational \$1 per day or food for labor in the Voluntary Work Program (“VWP”). Washington seeks a declaration requiring GEO comply with Washington’s minimum wage laws in the future. In addition, Washington claims that, since 2005, GEO has benefitted from its unfair labor practices regarding detainee workers at the NWDC and asks the Court to order GEO, a for-profit corporation, to disgorge the amount by which it has been unjustly enriched. Complaint, ECF 1-1 ¶ 7.6. Washington pursues discovery regarding at least two dimensions of GEO’s

1 benefit and unjust enrichment: 1) the difference between “fair wages” and what GEO actually  
 2 paid detainee workers; and 2) the profit GEO derived as a result of its unfair labor practices.

3 GEO asserts an Affirmative Defense<sup>1</sup> of “offset” against Washington’s unjust  
 4 enrichment award: “Affirmative Defense 8.12. [A]ny award against GEO for unjust enrichment  
 5 must be offset by costs incurred for caring for plaintiffs during their time in detention.” GEO’s  
 6 Answer and Counterclaims, ECF 34, *as modified by* Order on State’s Motion to Dismiss or Strike  
 7 Defendant’s Counterclaims and Affirmative Defenses, ECF 44 at 5-6 (removing first clause). In  
 8 its initial disclosures and interrogatory answers, GEO quantifies the offset as “\$17.12 per hour  
 9 of participation in the Voluntary Work Program.”

10 In Section A of this motion, Washington seeks financial information, statements, and  
 11 documents regarding NWDC and the VWP to ascertain the profits and benefits GEO retained  
 12 from detainee labor from 2005 to the present that are relevant to Washington’s “unjust  
 13 enrichment” claim and remedy. In Section B of this motion, Washington seeks financial  
 14 documents related to the care of detainees that are relevant to GEO’s offset affirmative defense  
 15 and that were used to generate the offset amount and calculation.

16 GEO has refused to produce any responsive profit or financial information, statements,  
 17 or documents regarding the NWDC or the VWP, claiming that the discovery is irrelevant,  
 18 premature until liability is established, and, if there is a future production of financial  
 19 information, should be limited to the VWP alone. In addition, GEO has withheld all but three  
 20 summary documents underlying its offset calculation. As Washington cannot effectively litigate  
 21 its claims or defend against GEO’s affirmative defense without the profit and financial evidence  
 22 it seeks, Washington now moves this Court to order GEO to produce the requested discovery.

23 This Court should order GEO to produce responsive documents now because (1) GEO’s  
 24 profit information and financial records are relevant and necessary to prove Washington’s unjust  
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26 <sup>1</sup> The affirmative defense of “offset” portion of this joint discovery motion is now moot, *see infra* Section III.B, but remains here to ensure the integrity of the LCR 37 briefing process.

1 enrichment claim as well as to calculate the disgorgement of profit remedy; (2) GEO's financial  
 2 records are relevant to its own offset affirmative defense; (3) GEO has refused to produce any  
 3 profit information or financial records; and (4) Washington's attempts to resolve these issues  
 4 without judicial intervention have been unsuccessful.

5         Federal Rule of Civil Procedure 33 requires parties to answer interrogatories and Federal  
 6 Rule of Civil Procedure 34 requires parties to produce documents that are responsive to  
 7 discovery requests. A party may move to compel discovery if the movant has, in good faith,  
 8 conferred with the party opposing discovery to obtain the requested discovery without the court's  
 9 intervention and that good faith attempt has failed. *Hancock v. Aetna Life Ins. Co.*, 321 F.R.D.  
 10 383, 390 (W. D. Wash. July 20, 2017) (citing Fed. R. Civ. P. 26(c)). "A party seeking discovery  
 11 may move for an order compelling . . . production . . . if a party fails to produce documents."  
 12 Fed. R. Civ. P. 37(a)(3)(B)(iv).

13         "The party that resists discovery has the burden to show why the discovery request should  
 14 be denied[.]" *Alexander v. U.S. Bank. N.A.*, No. C16-1045RSM, 2016 WL 9525593, at \*1 (W.D.  
 15 Wash. Dec. 1, 2016). Indeed, under "the liberal discovery principles of the Federal Rules [the  
 16 resisting party] carr[ies] a heavy burden of showing why discovery was denied." *Blankenship v.*  
 17 *Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975).

18         Washington certifies pursuant to LCR 37(a) that it has met and conferred with GEO over  
 19 the telephone and in good faith in an effort to resolve this dispute without Court action. *See*  
 20 Brenneke Decl. ¶ 15.

## 21                   **II.       GEO'S INTRODUCTORY STATEMENT**

22         The GEO Group, Inc. ("GEO") moves under Federal Rule 26(c) for a protective order  
 23 limiting discovery with respect to GEO's profitability because that information is irrelevant to  
 24 any issue in this case. Alternatively, the Court should bifurcate trial of liability and damages on  
 25 the State of Washington's ("State") claims and stay production of profitability information  
 26 unless and until it becomes relevant to any issue in this case.

1       The State currently seeks to force GEO to produce extensive discovery relating not only  
 2 to NWDC's yearly profitability but also into almost all aspects of GEO's business in Washington  
 3 and elsewhere. *See infra*, III(A). But this information is completely irrelevant to any liability  
 4 issue in this case. Whether NWDC—or GEO as a whole—operates in the red or in the black has  
 5 no bearing on who is an “employee,” or whether GEO is their “employer.” Nor does it relate to  
 6 the measure of any fair wage that detainees or anyone else would fairly expect for working at  
 7 NWDC. As the State admits in its briefing, the VWP program is a pass-through. GEO does not  
 8 pay the detainees \$1 a day, then charge ICE some markup above that. There are no profits from  
 9 the program itself. The only conceivable “profit” that could be disgorged would be the  
 10 differential between the VWP’s \$1 a day payment, and what GEO would otherwise have to pay  
 11 outside workers (to the extent the work is even necessary to run the facility). The information  
 12 is therefore completely irrelevant, and the State’s attempt to force GEO to produce it is an  
 13 improper fishing expedition. Further, even if the information were to have some marginal  
 14 relevance, its only conceivable use would be prejudicial to GEO, and any inadvertent disclosure  
 15 could encourage further competitive harm at NWDC. Because information relating to NWDC’s  
 16 profitability is irrelevant to the State’s claims and could potentially cause substantial harm to  
 17 GEO or others if disclosed, it should be protected from discovery.

18       Even if the Court believes the information might have some relevance, the Court should  
 19 still stay production unless and until that relevance is manifest. This Court has discretion to  
 20 bifurcate proceedings to address liability before assessing any possible award to the State. By  
 21 doing so, it could obviate any need to force GEO to disclose its confidential business  
 22 information, which is irrelevant to liability under any theory the State has espoused to date. That  
 23 approach would protect GEO’s interests against any possible misuse of the information by the  
 24 State, whether inadvertent or otherwise. Consequently, the Court need not order GEO to disclose  
 25 information relating to GEO’s profitability—or any of the other myriad documents the State  
 26

1 seeks relating to GEO's business, internal analyses, bid preparation, or anything similar—even  
 2 if it finds that that information may become relevant at some future time.

### 3 III. DISCOVERY REQUESTS AT ISSUE

#### 4 A. GEO's Financial Statements and Documents for NWDC and the VWP Program

5 Washington's Second Interrogatories to Defendant GEO ("Second Rogs") ask GEO to  
 6 identify GEO's profits or losses for NWDC [f]or each year from 2005 to the present. *See*  
 7 Brenneke Decl. ¶3, Ex. A (Second Rogs at Int. No. 7) and Brenneke Decl. ¶4, Ex. B (Resp. to  
 8 Second Rogs at Int. No. 7). Specifically:

9 **INTERROGATORY NO. 7:** For each year from 2005 to the present, please  
 10 identify GEO's profits or losses for NWDC and the basis for your answer.

11 **RESPONSE TO NO. 7:** GEO objects to this Interrogatory as outside of the  
 12 scope of discovery, to the extent that its seeks information regarding GEO's  
 13 profits or losses beyond those related to the voluntary work program ("VWP"),  
 14 which are not relevant to the claims or defenses in this case. GEO further  
 15 objects on the grounds that the Interrogatory is unduly burdensome, as it  
 16 would require GEO to continuously supplement and amend its response without  
 17 a defined end date. Subject to and without waiving GEO's above stated  
 objections, GEO answers as follows: GEO's profits or losses are not relevant to  
 this proceeding, if at all, until there is determination that GEO is subject to suit  
 and liable for payment of wages to VWP participants under the Washington  
 Minimum Wage Act and/or a theory of unjust enrichment. Should GEO at that  
 time be required to provide a response, GEO will produce documents pursuant  
 to Fed. R. Civ. P. 33(d) that state and describe GEO's profits or losses for the  
 NWDC during the relevant period.

18 Washington's Second Requests for Production to Defendant GEO ("Second RFPs"),  
 19 seek production of financial documents regarding GEO's profits or losses for NWDC and GEO's  
 20 Response to Interrogatory No. 7. *See* Brenneke Decl. ¶5, Ex. C (Second RFPs at RFP 18) and  
 21 Brenneke Decl. ¶6, Ex. D (Resp. to Second RFPs). Specifically:

22 **REQUEST FOR PRODUCTION NO. 18:** Please produce all  
 23 documents that are referenced in, support, or that form the basis of Your response  
 to Interrogatory No. 7.

24 **RESPONSE TO NO. 18:** GEO objects to this Request on the grounds  
 25 that it is unduly burdensome as it seeks "all documents . . . that form the basis"  
 for GEO's response to Interrogatory No. 7, where documents sufficient to show  
 the profits and losses for NWDC would be reasonable and complete. Likewise,  
 GEO objects to the Request as not proportionate to the needs of the case, as  
 discovery of "all documents" used to detail the profits and losses at NWDC does

nothing to resolve any issue in the case and any burden on GEO would outweigh the negligible benefit Plaintiff would receive from the information. GEO further objects to this Request as outside of the scope of discovery, to the extent that its seeks information regarding GEO's profits or losses, beyond those related to the voluntary work program ("VWP"), as all other profits and losses are not relevant to the claims or defenses in this case. GEO also objects to this Request as overly broad and unduly burdensome as Interrogatory No. 7 has no defined end date and requires GEO to continuously supplement its responses. GEO objects to this Request to the extent that it seeks that information protected by the attorney-client privilege, the work product doctrine, the common interest privilege, and/or any other applicable privileges or immunities. Subject to and without waiving GEO's above stated objections, GEO will not be producing documents responsive to this Request at this time. Documents concerning GEO's profits or losses are not relevant to this proceeding at this time. Should the court determine that GEO is subject to suit and liable for payment of wages to VWP participants under the Washington Minimum Wage Act and/or a theory of unjust enrichment, GEO will then conduct a reasonable search of documents on active electronic systems and reasonably accessible paper storage areas that GEO reasonably believes contain potentially relevant information within its possession, custody, and control, to the extent they exist and subject to the protective order entered in this case, produce relevant, responsive, non-privileged documents sufficient to show the profits and losses related to the VWP at NWDC created from 2005 to January 5, 2018. GEO is withholding documents on the basis of the above stated objections.

Washington also requested financial documents regarding the benefits and profits derived from detainee labor and the VWP at the NWDC, as well as the relevant corporate entities, from greater to more particular specificity.

**REQUEST FOR PRODUCTION NO. 38:** For each of the years 2005 to the present, please produce all GEO's financial statements, Profit and Loss statements, budget, and budget to actual analysis on a quarterly or annual basis for each of the years during the relevant time period.

**RESPONSE TO NO. 38:** GEO objects to this Request as outside of the scope of discovery, as it seeks documents that are not relevant to the claims or defenses in this case. GEO's Profit and Loss statements contain information related to a multitude of other facilities that are not subject to the above captioned litigation and over which the State of Washington has no authority, oversight, or contractual relationship. GEO also objects to this Request as cumulative of other requests, including, but not limited to, Request No. 18. GEO also objects to this Request on the grounds that it is unduly burdensome, as it would require GEO to continuously supplement and produce additional information without a defined end date. Finally, GEO objects to this Request to the extent that it requests information protected by the attorney-client privilege, the work product doctrine, the common interest privilege, and/or any other applicable privileges or immunities. GEO will not be producing documents in response to this Request and is withholding responsive documents subject to the above stated objections.

1                   **REQUEST FOR PRODUCTION NO. 39:** To the extent not previously  
 2 produced, please produce GEO's U.S. Corrections & Detention Division  
 3 financial statements, Profit and Loss statements, budget, and budget to actual  
 analysis on a quarterly or annual basis for each of the years during the relevant  
 time period.

4                   **RESPONSE TO NO. 39:** GEO objects to this Request as outside of the  
 5 scope of discovery, as it seeks documents that are not relevant to the claims or  
 6 defenses in this case. Furthermore, GEO objects to this Request as it is not  
 7 proportionate to the needs of the case, as discovery of GEO's U.S. Corrections &  
 8 Detention Division's financial statements, Profit and Loss statements, budget,  
 9 and budget to actual analysis on a quarterly or annual basis do nothing to resolve  
 10 any issue in the case and any burden on GEO would outweigh the negligible  
 11 benefit Plaintiff would receive from the information. GEO also objects to this  
 12 Request on the grounds that it is unduly burdensome, as it would require GEO to  
 continuously supplement and produce additional information without a defined  
 end date. GEO also objects to this Request as cumulative of other requests,  
 including, but not limited to, Request Nos. 18 and 38. Finally, GEO objects to  
 this Request to the extent that it requests information protected by the attorney-  
 client privilege, the work product doctrine, the common interest privilege, and/or  
 any other applicable privileges or immunities. GEO will not be producing  
 documents in response to this Request and is withholding responsive documents  
 subject to the above stated objections.

13                  **REQUEST FOR PRODUCTION NO. 40:** To the extent not previously  
 14 produced, please produce the NWDC's financial statements, Profit and Loss  
 15 statements, budget, and budget to actual analysis on a quarterly or annual basis  
 16 from 2005 to present, including all documents that set forth the detailed operating  
 costs of the facility, Voluntary Work Program costs, labor costs, and payroll  
 expenses as well as all details of revenue, contract payments and reimbursements.

17                  **RESPONSE TO NO. 40:** GEO objects to this Request to the extent that  
 18 it seeks financial statements or other documents reflecting budgeted expenditures  
 19 that are not relevant to the claims or defenses in this case. In addition, this request  
 20 is objectionable because it is overly broad and unduly burdensome as it seeks  
 21 budgets, budget to actual analyses which have no bearing on any claim or defense  
 22 in the case. GEO also objects to this Request on the grounds that it is unduly  
 23 burdensome, as it would require GEO to continuously supplement and produce  
 24 additional information without a defined end date. Finally, GEO also objects to  
 25 this Request as cumulative of other requests, including, but not limited to,  
 Request Nos. 18, 38, and 39. Subject to and without waiving GEO's above stated  
 objections, GEO will conduct a reasonable search of documents on active  
 electronic systems and reasonably accessible paper storage areas that GEO  
 reasonably believes contain potentially relevant information within its  
 possession, custody, and control, and produce relevant, responsive, non-  
 privileged documents, to the extent they exist and subject to the protective order  
 entered in this case, sufficient to show actual expenditures related to the VWP at  
 NWDC from 2005 to January 5, 2018. GEO will withhold documents subject to  
 the above stated objections.

1                   **REQUEST FOR PRODUCTION NO. 41:** To the extent not previously  
 2 produced, please produce all documents that contain financial performance  
 3 analysis, financial models, financial evaluations, analysis of profits earned, or  
 4 other assessments of the performance of the NWDC contract(s) with ICE.

5                   **RESPONSE TO NO. 41:** GEO objects to this Request on the grounds  
 6 that it far exceeds the scope of discovery under Fed. R. Civ. P. 26(b)(1) as it seeks  
 7 documents that have no bearing on the claims or defenses in this case. To the  
 8 extent the State seeks information related to its unjust enrichment claim, analyses,  
 9 models, evaluations and other assessments are not relevant. Only the actual  
 10 profits or losses related to the NWDC's VWP program would be relevant. GEO  
 11 has agreed to produce those documents, subject to its objections, in response to  
 Request 18. GEO objects to this Request to the extent that it requests information  
 protected by the attorney-client privilege, the work product doctrine, the common  
 interest privilege, and/or any other applicable privileges or immunities. GEO also  
 objects to this Request on the grounds that it is unduly burdensome, as it would  
 require GEO to continuously supplement and produce additional information  
 without a defined end date. Finally, GEO objects to this Request as cumulative  
 of other Requests seeking similar financial information. GEO will not be  
 producing documents in response to this Request and is withholding responsive  
 documents subject to the above stated objections.

12                  **REQUEST FOR PRODUCTION NO. 42:** To the extent not previously  
 13 produced, please produce all documents related to the profit or loss of the  
 14 NWDC's Voluntary Work Program, including budget, and budget to actual  
 15 analysis on a quarterly or annual basis from 2005 to the present, and all  
 16 documents that set forth the detailed operating costs of the Voluntary Work  
 17 Program, as well as revenues, payments and reimbursements received.

18                  **RESPONSE TO NO. 42:** GEO objects to this Request because it is  
 19 overly broad and unduly burdensome as it seeks budgets, budget to actual  
 20 analyses which have no bearing on any claim or defense in the case. GEO further  
 21 objects to this request because it seeks all documents related to the profit or loss  
 22 of the NWDC's Voluntary Work Program. To the extent the State seeks  
 23 information related to its unjust enrichment claim only the actual profits or losses  
 24 related to the NWDC's VWP program would be relevant. GEO has agreed to  
 25 produce those documents, subject to its objections, in response to Request 18.  
 GEO also objects to this Request on the grounds that it is unduly burdensome, as  
 it would require GEO to continuously supplement and produce additional  
 information without a defined end date. Finally, GEO objects to this Request as  
 cumulative of other Requests seeking similar financial information, such as  
 Request No. 40. Subject to and without waiving GEO's above stated objections,  
 GEO will conduct a reasonable search of documents on active electronic systems  
 and reasonably accessible paper storage areas that GEO reasonably believes  
 contain potentially relevant information within its possession, custody, and  
 control, and produce relevant, responsive, non-privileged documents, to the  
 extent they exist and subject to the protective order entered in this case, sufficient  
 to show the operating costs of the VWP at NWDC from 2005 to January 5, 2018.  
 GEO will withhold documents subject to the above stated objections.

1                   **REQUEST FOR PRODUCTION NO. 43:** To the extent not previously  
 2 produced, please produce all documents that contain financial analysis, financial  
 3 models, analysis of profits earned, valuation of the work performed, or other  
 4 assessments of the Voluntary Work Program at the NWDC from 2004 to present.  
 5

6                   **RESPONSE TO NO. 43:** GEO objects to this Request to the extent that  
 7 it seeks financial projections or other documents reflecting budgeted expenditures  
 8 that are not relevant to the claims or defenses in this case. GEO also objects to  
 9 this Request on the grounds that it is unduly burdensome, as it would require GEO  
 10 to produce documents dating back to 2004—before the relevant time period of this  
 11 case and to continuously supplement and produce additional information without  
 12 a defined end date. Finally, GEO objects to this Request as cumulative of other  
 13 Requests seeking similar financial information, such as, but not limited to,  
 14 Requests Nos. 40 and 42. Subject to and without waiving GEO's above stated  
 15 objections, GEO will conduct a reasonable search of documents on active  
 16 electronic systems and reasonably accessible paper storage areas that GEO  
 17 reasonably believes contain potentially relevant information within its  
 18 possession, custody, and control, and produce relevant, responsive, non-  
 19 privileged documents, to the extent they exist and subject to the protective order  
 20 entered in this case, sufficient to show GEO's financial analysis of the VWP at  
 21 NWDC from 2005 to January 5, 2018. GEO will withhold documents subject to  
 the above stated objections.

22                   **REQUEST FOR PRODUCTION NO. 44:** To the extent not previously  
 13 produced, please produce all documents that contain financial analysis, financial  
 14 models, analysis of profits earned, valuation of the work performed, or other  
 15 assessments of the Voluntary Work Program within the GEO Group from 2005  
 16 to the present.

17                   **RESPONSE TO NO. 44:** GEO objects to this Request to the extent that  
 18 it seeks financial projections or other documents reflecting budgeted expenditures  
 19 that are not relevant to the claims or defenses in this case. GEO also objects on  
 20 the grounds that this Request seeks information related to facilities other than the  
 21 NWDC, which is outside of the scope of discovery and not relevant to the claims  
 22 or defenses of this case. Furthermore, GEO objects to this Request on the grounds  
 23 that it is unduly burdensome, as it would require GEO to continuously supplement  
 24 and produce additional information without a defined end date. Finally, GEO  
 25 objects to this Request as cumulative of other Requests seeking similar financial  
 26 information, such as, but not limited to, Requests Nos. 40, 42, and 43. GEO will  
 not be producing documents in response to this Request and is withholding  
 responsive documents subject to the above stated objections.

27                   Finally, Washington sought additional categories of financial documents and  
 28 information regarding the benefits and profits derived from detainee labor and the VWP at the  
 29 NWDC, including: financial performance analysis, models and evaluations (RFP 51); per diem  
 30 rate calculations (RFP 52); calculations concerning overhead and other costs allocated to the  
 31

1 NWDC Contracts in evaluating profitability and the per diem rates (RFP 53); analyses of the  
 2 NWDC Contract costs, and categorization of those costs as variable or fixed (RFP 54); and  
 3 assumptions made in determining the contractually negotiated per diem rate(s) and calculations  
 4 for the NWDC Contracts (RFP 55). Specifically:

5

6           **REQUEST FOR PRODUCTION NO. 51:** Please produce all  
 7 documents containing financial performance analyses, financial models, or other  
 8 financial evaluations prepared in connection with or for the purpose of GEO  
 9 Group's offer(s) and bid(s), and negotiations related to amendment(s) and  
 10 renewal(s), of contracts related to the NWDC from 2005 - present.

11

12           **RESPONSE TO NO. 51:** GEO objects to this Request to the extent that  
 13 it requests information protected by the attorney-client privilege, the work  
 14 product doctrine, the common interest privilege, and/or any other applicable  
 15 privileges or immunities. GEO objects to this request as it is wildly overbroad  
 16 because as written it would seek the analyses, models, or other valuations for any  
 17 contract, the vast majority of which have no bearing whatsoever on the claims or  
 18 defenses in this case. For example, the request as written seeks financial analyses,  
 19 models, or evaluations related to contracts with food distributors, maintenance  
 20 contracts for the heating and air conditioning, and contracts for IT equipment.  
 21 None of these are relevant to the claims or defenses in this case. GEO also objects  
 22 to this Request overly broad and unduly burdensome as the financial performance  
 23 analyses, financial models, or other financial evaluations prepared in connection  
 24 with or for the purpose of GEO Group's offer(s) and bid(s), and negotiations  
 25 related to amendment(s) and renewal(s), of ICE contracts related to the NWDC  
 26 also have no bearing on the claims or defenses in this case. None of that  
 information would make it more or less likely that detainees at the NWDC who  
 participated in the VWP are employees under the Washington State Minimum  
 Wage Act. Nor would these analyses, evaluations or assessments impact the  
 actual profit or losses related to the NWDC's VWP program. GEO also objects  
 on the basis that the terms "financial performance analysis," "financial models,"  
 and "financial evaluations" as vague and ambiguous. GEO also objects to this  
 Request on the grounds that it is unduly burdensome, as it would require GEO to  
 continuously supplement and produce additional information without a defined  
 end date. Finally, GEO objects to this Request as cumulative of other Requests  
 seeking similar financial information. GEO will not be producing documents in  
 response to this Request and is withholding responsive documents subject to the  
 above stated objections.

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29           **REQUEST FOR PRODUCTION NO. 52:** To the extent not previously  
 30 produced, please produce any per diem rate calculations and models related to  
 31 GEO Group's NWDC Contract(s) from 2005 to present, including, but not  
 32 limited to, the following factors: "Voluntary Work Program" costs and expenses;  
 33 labor costs and payroll expenses (excluding Voluntary Work Program); expected  
 34 and guaranteed occupancy; all other costs of providing services (including food,  
 35 medical, building operations, etc.); desired margins.

36

**1           RESPONSE TO NO. 52:** GEO objects to this Request to the extent that  
 2 it requests information protected by the attorney-client privilege, the work  
 3 product doctrine, the common interest privilege, and/or any other applicable  
 4 privileges or immunities. GEO objects to this request as outside the scope of  
 5 discovery as defined in Fed. R. Civ. P. 26(b)(1) as it requests per diem rate  
 6 calculations and models related to the NWDC's expected and guaranteed  
 7 occupancy and desired margins. Neither of these categories of documents have  
 8 any bearing on the claims or defenses in this case nor would they impact any  
 9 disgorgement calculation. GEO also objects to this Request on the grounds that  
 10 it is unduly burdensome, as it would require GEO to continuously supplement  
 11 and produce additional information without a defined end date. GEO objects to  
 12 this Request as vague and ambiguous as it relates to the undefined "NWDC  
 13 Contracts," which (as described in GEO's response to Request 51) may  
 14 encompass myriad contracts having nothing to do with this case. Finally, GEO  
 15 objects to this Request as it is cumulative of other Requests seeking similar  
 16 financial information. Subject to and without waiving GEO's above stated  
 17 objections, GEO will conduct a reasonable search of documents on active  
 18 electronic systems and reasonably accessible paper storage areas that GEO  
 19 reasonably believes contain potentially relevant information within its  
 20 possession, custody, and control, and produce relevant, responsive, non-  
 21 privileged documents, to the extent they exist and subject to the protective order  
 22 entered in this case, sufficient to show GEO's per diem rate calculations and  
 23 models related to the VWP, labor costs and payroll expenses (excluding  
 24 Voluntary Work Program); all other costs of providing services (including food,  
 25 medical, building operations, etc.) at NWDC from 2005 to January 5, 2018. GEO  
 26 will withhold documents subject to the above stated objections.

**15           REQUEST FOR PRODUCTION NO. 53:** To the extent not previously  
 16 produced, please produce any calculations concerning overhead and other costs  
 17 allocated to the NWDC Contracts in evaluating profitability and the per diem  
 18 rates as well as the methodology used to allocate such costs, including any  
 19 changes in methodology.

**20           RESPONSE TO NO. 53:** GEO objects to this Request to the extent that  
 21 it requests information protected by the attorney-client privilege, the work  
 22 product doctrine, the common interest privilege, and/or any other applicable  
 23 privileges or immunities. Furthermore, GEO objects to the Request as not  
 24 proportionate to the needs of the case, as discovery of any calculations concerning  
 25 overhead and "other costs allocated to the NWDC contracts" is unreasonably  
 26 broad and burdensome when documents sufficient to show such calculations and  
 27 costs would be reasonable and complete. GEO objects to this Request as vague  
 28 and ambiguous as it relates to the undefined "NWDC Contracts," which (as  
 29 described in GEO's response to Request 51) may encompass myriad contracts  
 30 having nothing to do with this case. Finally, GEO objects to this Request as it is  
 31 cumulative of other Requests seeking similar financial information, including but  
 32 not limited to Request No. 52. Subject to and without waiving GEO's above  
 33 stated objections, GEO will conduct a reasonable search of documents on active  
 34 electronic systems and reasonably accessible paper storage areas that GEO  
 35 reasonably believes contain potentially relevant information within its  
 36 possession, custody, and control, and produce relevant, responsive, non-

1 privileged documents, to the extent they exist and subject to the protective order  
 2 entered in this case, sufficient to show GEO's calculations and models concerning  
 3 overhead and other costs related to the VWP at NWDC from 2005 to January 5,  
 4 2018. GEO will withhold documents subject to the above stated objections.  
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6 **REQUEST FOR PRODUCTION NO. 54:** To the extent not previously  
 7 produced, please produce all documents that contain any analyses of the NWDC  
 8 Contract costs, and categorization of those costs as variable or fixed, during the  
 9 relevant period and any changes to allocation of costs inbetween categories.  
 10

11 **RESPONSE TO NO. 54:** GEO objects to this Request to the extent that  
 12 it requests information protected by the attorney-client privilege, the work  
 13 product doctrine, the common interest privilege, and/or any other applicable  
 14 privileges or immunities. GEO also objects to this Request to the extent that it  
 15 seeks analyses of NWDC ICE contract costs that are not relevant to the claims or  
 16 defenses in this case. Furthermore, GEO objects to the Request as not  
 17 proportionate to the needs of the case, as discovery of "all documents that contain  
 18 any analyses of the NWDC Contract costs" places a substantial burden on GEO  
 19 that would outweigh the negligible benefit Plaintiff would receive, especially  
 20 from information unrelated to the VWP at the NWDC. GEO objects to this  
 21 Request as vague and ambiguous as it relates to the undefined "NWDC  
 22 Contracts," which (as described in GEO's response to Request No. 51) may  
 23 encompass myriad contracts having nothing to do with this case. This request is  
 24 also unduly because it seeks, among other information, documents containing  
 25 "any changes to the allocation of costs inbetween categories," which would  
 26 require an unreasonable and disproportionate amount of analysis to determine  
 27 which, if any, documents contained such changes. Finally, GEO objects to the  
 28 extent this Request is cumulative of other Requests seeking similar financial  
 29 information. Subject to and without waiving GEO's above stated objections,  
 30 GEO will conduct a reasonable search of documents on active electronic systems  
 31 and reasonably accessible paper storage areas that GEO reasonably believes  
 32 contain potentially relevant information within its possession, custody, and  
 33 control, and produce relevant, responsive, non-privileged documents, to the  
 34 extent they exist and subject to the protective order entered in this case, sufficient  
 35 to show GEO's analysis of costs related to the VWP in GEO-ICE contracts  
 36 governing GEO's operation of the NWDC from 2005 to January 5, 2018. GEO  
 37 will withhold documents subject to the above stated objections.

38 **REQUEST FOR PRODUCTION NO. 55:** To the extent not previously  
 39 produced, please produce any documents or information related to assumptions  
 40 made in determining the contractually negotiated per diem rate(s) and  
 41 calculations for the NWDC Contracts.  
 42

43 **RESPONSE TO NO. 55:** GEO objects to this Request to the extent that  
 44 it requests information protected by the attorney-client privilege, the work  
 45 product doctrine, the common interest privilege, and/or any other applicable  
 46 privileges or immunities. GEO objects to this request as it seeks documents  
 47 outside the scope of discovery as defined by Fed. R. Civ. P. 26(b)(1) because  
 48 assumptions made in determining the contractually negotiated per diem rates and  
 49 calculations in the GEO ICE NWDC contract have no bearing on whether  
 50

d detainees participating in the VWP program are employees under the Washington State Minimum Wage Act nor does that information impact any possible disgorgement calculation. GEO objects to this Request as vague and ambiguous as it seeks “information related to assumptions made” concerning the undefined “NWDC Contracts.” Finally, GEO objects to the extent this Request is cumulative of other Requests seeking similar financial information, including but not limited to, Requests No. 52 to 54. GEO will not be producing documents in response to this Request and is withholding responsive documents subject to the above stated objections.

## 1. Washington's Argument

**a. GEO Refuses to Produce Any of The Profit and Financial Information, Statements, and Documents Washington Seeks**

Washington's discovery seeks information regarding the "benefit" and profits GEO received at the NWDC from detainee labor there. *See* Brenneke Decl. ¶3, Ex. A (Int. No. 7) and Brenneke Decl. ¶5, Ex. C (RFPs 18, 38-44, 51-55). Washington propounded Interrogatory No. 7 and RFP No. 18 to obtain comprehensive information about GEO's profits and finances at the NWDC where the detainees work, including the VWP. Washington also issued a series of requests for production of particular financial documents related to evaluating GEO's profits and losses from a lesser to greater specificity of focus on the VWP at the NWDC. These include: GEO's overall corporate profits and losses, *id.* at RFP 38; GEO's profits and losses within the "U.S. Corrections & Detention" division, of which NWDC is part, *id.* at RFP 39; GEO's profits at the NWDC itself, *id.* at RFPs 18, 40-41; GEO's profits and losses of the VWP at the NWDC, *id.* at RFPs 42-43; and GEO's profits and losses from the VWP in its overall corporate structure. *Id.* at RFP 44.

In addition, Washington propounded a series of additional requests to illuminate other aspects of the financial model and profits of the NWDC and its VWP: financial performance analysis, models and evaluations, *id.* at RFP 51; per diem rate calculations, *id.* at RFP 52; calculations concerning overhead and other costs allocated to the NWDC Contract in evaluating profitability and the per diem rates, *id.* at RFP 53; analyses of the NWDC Contract costs, and categorization of those costs as variable or fixed, *id.* at RFP 54; and assumptions made in

1 determining the contractually negotiated per diem rate(s) and calculations for the NWDC  
 2 Contract, *id.* at RFP 55.

3 In response, Defendant GEO refused to produce any of its profit or financial information  
 4 about the NWDC, claiming “GEO’s profits or losses are not relevant to this proceeding, if at all,  
 5 until there is determination that GEO is subject to suit and liable for payment of wages to VWP  
 6 participants under the Washington Minimum Wage Act and/or a theory of unjust enrichment.”  
 7 *See supra*, GEO’s Resp. to Int. 7. Only then, after a liability determination, would GEO agree to  
 8 search for and produce documents. *Id.* GEO’s refusal to release financial documents until after  
 9 it is determined GEO is liable disregards the fact that the Court already has entered an Order  
 10 denying Defendant GEO’s motion to dismiss Washington’s unjust enrichment claim and allowed  
 11 the claim to proceed to discovery. ECF 29 at 15-16. Further, as set forth below, the evidence of  
 12 GEO’s profits and finances is relevant and necessary for Washington to prove liability on the  
 13 unjust enrichment claim itself and it would prejudice Washington to delay discovery until after  
 14 a liability determination.

15 Inasmuch as GEO has indicated willingness to produce any financial information,  
 16 statements, and documents responsive to Washington’s requests in the future, GEO also  
 17 unilaterally limits the scope of the requested discovery to responsive information “related to the  
 18 VWP at the NWDC” alone, ignoring that the VWP is but one part of the NWDC’s and GEO’s  
 19 total budget and profit picture. *See* GEO’s Resp. to RFP 18 (emphasis added). *See also*, GEO’s  
 20 Resp. to RFP 40 (will search for and produce only documents related to the VWP at the NWDC);  
 21 GEO’s Resp. to RFP 41 (refusal to produce any documents showing financial performance  
 22 analysis or profit modeling of the NWDC); GEO’s Resp. to RFP 51 (refusal to produce NWDC  
 23 financial performance analysis, models, or evaluations underlying contract offers or bids);  
 24 GEO’s Resp. to RFP 53 (will search for and produce documents related to calculations of  
 25 overhead and costs only for the VWP at the NWDC); GEO’s Resp. to RFP 54 (will search for  
 26 and produce only documents related cost categories for the VWP at the NWDC); GEO’s Resp.

1 to RFP 38 (refusal to produce financial documents related to The GEO Group, Inc.); GEO's  
 2 Resp. to RFP 39 (same for GEO's US. Corrections & Detention Division)

3           **b.     GEO's Profit and Financial Records Are Essential Elements of Proof  
              of Washington's Unjust Enrichment Claim and Remedy**

5           Under Washington law, unjust enrichment occurs "when one retains money or benefits  
 6 which in justice and equity belong to another." *Bailie Commc'ns, Ltd. v. Trend Bus. Sys., Inc.*,  
 7 810 P.2d 12, 18 (Wash. Ct. App. 1991). To sustain its unjust enrichment claim, Washington must  
 8 prove three elements: (1) GEO receives a benefit, (2) the received benefit is at another's expense,  
 9 and (3) the circumstances make it unjust for GEO to retain the benefit without payment. *See*  
 10 *Young v. Young*, 191 P.3d 1258, 1262 (Wash. 2008). The Washington State Supreme Court  
 11 clarified that the remedy for "unjust enrichment" requires disgorgement of the *full value* of the  
 12 received benefit, with a focus on the *receiver of the benefit*, not the provider of the benefit. *Id.* at  
 13 1265 (holding disgorgement is not limited to the fair market value of labor, but also includes the  
 14 amount the contested services enhanced the value of the property at issue).

15           GEO's profits and financial records are essential elements of proof in the first and third  
 16 prongs of the unjust enrichment liability analysis. To the extent GEO derived profit from the  
 17 VWP, there is "benefit" to GEO received from the detainees' work; the amount and extent of  
 18 the profit derived from the unfair detainee labor practices are factual circumstances relevant to  
 19 the analysis of whether it is "unjust for GEO to retain the benefit without payment." *Id.* In  
 20 addition, determining the *amount of profit* GEO derived from the unfair detainee labor practices  
 21 at the NWDC is necessary for the computation of "disgorgement," the remedy for unjust  
 22 enrichment. ECF 1-1 at ¶ 7.6. While the difference between a "fair wage" and the \$1/day paid is  
 23 an essential part of the disgorgement of unjust enrichment analysis, Washington also is entitled  
 24 to discover and evaluate the full value of the benefit received and retained by GEO, including  
 25 company-wide profits, resulting from its practice of failing to pay adequate compensation to  
 26 detainees at the NWDC. As such, Washington must have access to GEO's financial information,

1 statements, and documents to understand the scope of GEO's benefit and enrichment and  
 2 effectively litigate its unjust enrichment case.

3 Circumstances particular to GEO's operations require – at a minimum – discovery of  
 4 financial information regarding the NWDC operation as a whole, not just the VWP in particular,  
 5 to complete the unjust enrichment liability and disgorgement analysis.

6 *First*, GEO contracts with ICE to run the NWDC, and is paid on the basis of a negotiated  
 7 per diem rate with a minimum bed guarantee. *See, e.g.*, GEO-ICE Contract, ECF 19 at 6  
 8 ("Detention Bed Days, Guaranteed Minimum"), and 103 (invoicing for "Firm Fixed Price Items"  
 9 including "pre-established monthly guaranteed minimums for detention" and "Fixed Unit Price  
 10 Items" including "Detention Services (other than firm fixed price)" paid on basis of "Bed day  
 11 rate"); Brenneke Decl. ¶ 14, Ex. J, Transcript of GEO 30(b)(6) Deposition in the Person of Ryan  
 12 Kimble (hereinafter "GEO 30(b)(6) Dep.") at 146:5–147:12. Therefore, any savings on  
 13 operational costs, such as avoiding fair market labor costs by paying detainees \$1/day or food  
 14 through the VWP, would increase GEO's profit margin. Foundationally, GEO admits that  
 15 NWDC is *profitable* and has not run at a loss, at least since 2012. GEO 30(b)(6) Dep. at 136:17–  
 16 137:4.

17 *Second*, as a result of GEO's budgeting practices, GEO's refusal to produce financial  
 18 statements and records regarding the NWDC, the U.S. Corrections & Detention Division, and  
 19 The GEO Group, Inc., and instead limit future production of financial documents to those related  
 20 to the VWP at the NWDC alone, will result in the production of no meaningful financial records  
 21 at all. This is because GEO chooses not to track specific information about the benefit or profit  
 22 it derives from detainee participation in the VWP in its normal course of operations; the NWDC  
 23 has an operating budget with line items for certain programmatic aspects of its operations such  
 24 as kitchen, food, and security, but there is no budget line item for the VWP. *Id.* at 134:3–135:7.  
 25 For budgeting purposes, the VWP is treated simply as a pass through: GEO invoices ICE for  
 26 reimbursement simply in the amount GEO has paid detainee workers. *Id.* at 135:8–136:1. The

1 very fact that GEO does not keep financial information about the profits generated by the VWP  
 2 itself requires GEO to produce profit and financial information about the operation of the  
 3 NWDC, the U.S. Corrections & Detention Division, and The GEO Group, Inc., as a whole, to  
 4 enable evaluation of GEO's benefit and profit from the challenged labor practices.

5         *Third*, in its written discovery responses, GEO has said it would provide Washington  
 6 documents responsive to requests seeking financial information and analysis about the VWP at  
 7 the NWDC. *See* Resp. to RFP 42 and RFP 43. GEO also said it would produce NWDC  
 8 documents that "show GEO's per diem rate calculations and models related to the VWP; labor  
 9 costs and payroll expenses (excluding Voluntary Work Program); all other costs of providing  
 10 services (including food, medical, building operations, etc.) at NWDC from 2005 to January 5,  
 11 2018." *See* Resp. to RFP 52. Yet, Washington has not yet received the responsive documents  
 12 and GEO refuses to produce them now. Indeed, during the meet and confer telephone  
 13 conferences, and in their CR 37 letters, GEO's counsel backtracked, rejected Washington's  
 14 articulation of why profit and financial information is relevant and necessary for proof of unjust  
 15 enrichment, the disgorgement of profit remedy, and analysis of GEO's claimed offset, and  
 16 refused to produce any financial documents without order of the court. *See* Brenneke Decl. ¶12,  
 17 Ex. H (GEO's Aug. 14, 2018 letter); *id. at* ¶9, Ex. F (Washington's Aug. 10, 2018 letter).

18         Because the financial documents requested about the VWP, the NWDC, the U.S.  
 19 Corrections & Detention Division, and The GEO Group, Inc. all are relevant to proving and  
 20 assessing the elements of unjust enrichment, the Court should order that they be produced within  
 21 10 days, and in full.

## 22           **2.       GEO's Response**

### 23           **a.      The State Seeks Discovery That Is Irrelevant And Burdensome**

24         The State's litany of requests for information regarding GEO's finances should be  
 25 denied. This Court may issue an order to "protect a party or person from ... undue burden or  
 26 expense," and it may specifically protect confidential commercial information. Fed. R. Civ. P.

1 26(c). While the Federal Rules allow for broad discovery, such discovery must be “relevant to  
 2 any party's claim or defense and proportional to the needs of the case, considering the importance  
 3 of the issues at stake in the action, the amount in controversy, the parties' relative access to  
 4 relevant information, the parties' resources, the importance of the discovery in resolving the  
 5 issues, and whether the burden or expense of the proposed discovery outweighs its likely  
 6 benefit.” Fed. R. Civ. P. 26(b)(1). It is improper to order a party to produce irrelevant  
 7 information. *Jiminez v. City of Chicago*, 733 F. Supp. 2d 1268, 1273 (W.D. Wash. 2010); *see also Hofer v. Mack Trucks, Inc.*, 981 F.2d 377, 380 (8th Cir. 1992) (“While the standard for relevance in the context of discovery is broader than in the context of admissibility..., this often intoned legal tenet should not be misapplied so as to allow fishing expeditions in discovery.”) (citations omitted); *Reming v. Holland Am. Line, Inc.*, No. C11-1609RSL, 2012 WL 3704937, at \*1-2 & n.1 (W.D. Wash. Aug. 27, 2012).

13 As noted above, the State currently seeks to discover the “profits or losses for NWDC”  
 14 for “each year from 2005 to the present.” *See supra*, III(A). The State also seeks to discover all  
 15 manner of other confidential business documents including internal financial analyses,  
 16 performance analyses, budgets of various kinds, operating costs, payroll expenses, financial  
 17 models used in bids and contract negotiations, and many other documents. *See id.* The State’s  
 18 requests are not limited to NWDC but extend to the rest of GEO’s business as well. *See id.* In  
 19 short, the State apparently seeks to audit GEO’s entire business dating back to 2005 on the  
 20 pretense that that material is somehow essential to the State’s claims.

21 But the State’s claims do not turn on GEO’s general financial status and profitability.  
 22 That information plainly does not relate to the applicability of the MWA. And in its own words,  
 23 the State measures GEO’s alleged unjust enrichment according to “the ***difference between the \$1 per day that [GEO] pays detainees and the fair wage that it should pay*** for work performed  
 24 at NWDC,” because it is “unjust for [GEO] to retain the benefit gained from its practice of *failing*  
 25

1     ***to pay adequate compensation*** to detainees for the work they perform at NWDC.” Complaint,  
 2 ECF 1-1, ¶¶ 6.5-6.6 (emphasis added).

3                 The State’s other filings show the same pattern. For example, the State claimed that GEO  
 4 has been unjustly enriched “by failing to pay detainee-workers a fair wage.” State’s Response  
 5 to GEO’s Mot. to Dismiss Compl., ECF 17, at 7. When detailing the elements of this claim later  
 6 in that same filing, the State described the alleged benefit to GEO as “the difference between the  
 7 \$1 per day that it pays and the fair wage that GEO should have paid.” *Id.* at 20. While the State  
 8 claimed that this measure is “untethered” to the MWA, the State’s measurement was still the  
 9 “fair market rate [GEO] would have had to pay for the work performed.” *Id.* at 20 n.6.

10               But to the extent this theory of unjust enrichment is appropriate at all—which GEO does  
 11 not admit—it has no relationship GEO’s profitability in Washington or elsewhere: the State’s  
 12 theory calls for a differential calculation between what GEO ***has*** paid and whatever the State  
 13 thinks GEO ***should*** pay. Indeed, when the State talks about “profit” it really means a “benefit,”  
 14 an element required under an unjust enrichment claim. But surely the State would make the  
 15 same claim if GEO was operating the VWP or the facility at a loss, rather than as a profit. The  
 16 State’s loose use of the term “profit” should not entitle it to discovery of irrelevant information  
 17 about “profits” that will only be used to harass GEO in a trial or in the public opinion. Thus,  
 18 discovery relating to profitability is irrelevant and undiscoverable. *Jiminez*, 733 F. Supp. 2d at  
 19 1273. It is just the sort of “fishing expedition” that courts should not allow. *Hofer*, 981 F.2d at  
 20 380; *Reming*, 2012 WL 3704937, at \*1-2.

21               The State’s own testimony confirms this result. The State claimed that when GEO  
 22 “employs” detainees to do odd tasks at NWDC, “it needs to pay workers no less than \$11 an  
 23 hour.” *Id.* at 126:23-127:7. Again, the State claimed that “if GEO was only going to pay  
 24 minimum wage for cooking, let’s say, GEO makes \$10 each hour that it otherwise had to pay  
 25 someone else to do that same work.” *Id.* at 135:13-18. The State admitted that the “minimum  
 26 wage has to be paid to employees who work for employers in Washington state, regardless of

1 whether a corporation makes any money, lots of money, [or] loses money.” *Id.* at 161:24-162:4.  
 2 And while the State then claimed that GEO’s profitability could be relevant to unjust enrichment  
 3 because that “analysis does depend on what the benefit is,” *id.* at 162:5-9, the State nonetheless  
 4 claimed that the benefit to GEO was the “receipt of the [detainees’] labor,” which it further  
 5 described as “avoid[ing] having to pay the minimum wage or any fair wage to workers and yet  
 6 ***get[ting] the full value of their work,***” *id.* at 163:1-4 (emphasis added). When asked how the  
 7 State would calculate that “full value,” the State explained that the “***legislature sets it or the***  
 8 ***people through their initiative lawmaking power set the value of hourly work,*** at least at a  
 9 minimal level.” *Id.* at 163:10-13 (emphasis added).

10 This testimony shows that GEO’s profitability is irrelevant to the State’s claims: If GEO  
 11 would owe a janitor minimum wage to clean, then it could conceivably have been unjustly  
 12 enriched—which GEO does not admit—by getting the same work from a detainee for only \$1;  
 13 and if GEO would owe a janitor a “fair wage” of, say, \$15 per hour to clean, then again it could  
 14 conceivably have been unjustly enriched by getting the same work for \$1. But in neither case  
 15 would GEO’s ***profitability*** affect the calculation of its unjust enrichment, let alone any of the  
 16 financial information the State now seeks. *See supra*, III(A). Thus, GEO’s profitability is just  
 17 as irrelevant to the State’s unjust enrichment claim as it is to the State’s claim for declaratory  
 18 and injunctive relief under the MWA. And if profitability is irrelevant, then discovery is  
 19 improper. *Hofer*, 981 F.2d at 380; *Jiminez*, 733 F.Supp.2d at 1273.

20 The State’s current arguments are not to the contrary. The State argues (1) that GEO’s  
 21 profit margins are relevant to its unjust enrichment claim because they are affected by alleged  
 22 savings achieved through the VWP; (2) that the State needs to dig into all of GEO’s financial  
 23 records because GEO does not keep records at NWDC that are specifically tailored to proving  
 24 the State’s case; and (3) that the State should get the records it wants because GEO agreed at one  
 25 point to provide some of them and should not be allowed to refuse now. *See supra*, III(A)(1)(a).  
 26 None of these arguments shows that GEO’s profitability is relevant to its liability under either

1 of the State's claims. And the first argument—the only one that even tries to connect profits to  
 2 an unjust enrichment award—is backward: even if GEO's profits are *affected by* the VWP—  
 3 which GEO does not admit—those profits are not therefore *the cause of* any unjust enrichment  
 4 to GEO.

5 Nor does the State's reliance on *Young v. Young* change the outcome. *Young* involved  
 6 an unjust enrichment claim regarding the improvement of a piece of real estate. *See* 164 Wash.  
 7 2d at 480-83. In assessing the proper measure of unjust enrichment, the court “h[e]ld [that] when  
 8 calculating an unjust enrichment award in a quasi-contract action for improvements to real  
 9 property the award may not be reduced by the claimant's actual cost absent fault by the claimant  
 10 or inconsequential relationship to the benefit conferred to the defendant.” *Id.* at 491. That  
 11 holding simply has nothing to do with the State's claim, which expressly turns on whether GEO  
 12 needed to pay either a minimum wage or some other “fair wage” at NWDC. *Young* offers no  
 13 support for the wide-ranging discovery the State seeks here.

14 Even were the information sought marginally relevant—which GEO does not admit—  
 15 the Court should still consider whether particularized harm will result from disclosure of  
 16 information to the public. If so, it should balance the public and private interests to decide  
 17 whether to compel production. *See Solis v. Washington, Dep't of Corr.*, No. 08-5362RJB, 2009  
 18 WL 10676491, at \*1 (W.D. Wash. Oct. 15, 2009) (Bryan, D.J.) (citing *Rivera v. NIBCO, Inc.*,  
 19 364 F.3d 1057, 1063 (9th Cir. 2004)). With respect to confidential information, courts should  
 20 consider the risk of “inadvertent disclosure” of a trade secret or other confidential information.  
 21 *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1470 (9th Cir. 1992).

22 Here, that risk is palpable. First, any use of GEO's confidential information would likely  
 23 be prejudicial. The State has admitted that it intends to produce a “calculation and analysis” of  
 24 GEO's apparent unjust enrichment that would “be disclosed in connection with [the State's]  
 25 disclosure of an expert report in this case.” Dep. of Melody Colleen, 166:5-18. The State would  
 26 not explain how any profitability or other financial information would affect that calculation and

1 analysis, however. And any use of GEO's financial information at trial would be more  
 2 prejudicial than probative. *See, e.g., United States v. Pac. Gas & Elec. Co.*, 178 F. Supp. 3d 927,  
 3 949-50 (N.D. Cal. 2016) (noting that "proof of greed, without more, is likely to amount to a great  
 4 deal of unfair prejudice with little probative value). The State has already trumpeted GEO's  
 5 alleged greed to the media to support this claim. *E.g., Attorney General of Washington, AG*  
 6 *Ferguson Sues Operator Of The Northwest Detention Center For Wage Violations* (Sept. 20,  
 7 2017) (<http://www.atg.wa.gov/news/news-releases/ag-ferguson-sues-operatornorthwest-detention-center-wage-violations>) (describing GEO as a "multi-billion dollar corporation" that  
 8 has netted "millions in ill-gotten profits").<sup>2</sup> If the only plausible use for GEO's financial  
 9 information is to disclose it to an expert and then to prejudice GEO in court, the Court should  
 10 not allow discovery of that information now.

12 At bottom, the State has no legitimate purpose for GEO's financial information. Its only  
 13 plausible use is to prejudice GEO, and any inadvertent public disclosure of that information  
 14 could create further disturbances outside NWDC beyond those that the State's case has already  
 15 provoked. For these reasons, GEO respectfully requests a protective order prohibiting the State  
 16 from inquiring into GEO's finances, both at NWDC and nationwide.

17           **b. The Court Need Not Order Burdensome Discovery Of GEO's  
 18 Finances Unless And Until That Information Becomes Relevant**

19 Even were the Court to deem evidence of profits to be relevant to the unjust enrichment  
 20 claim, GEO should not have to incur the prejudice of providing such information until the Court  
 21

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22           <sup>2</sup> Over the past few months, protesters have been regularly present outside NWDC and have caused  
 23 significant disruptions. Those protests have resulted in the need for new fencing to keep people away from nearby  
 24 train tracks. Jamie Tompkins, *Protesters Voice Complaints To Tacoma City Council Over Northwest Detention*  
*Center* (<https://q13fox.com/2018/07/10/protesters-voice-complaints-to-tacoma-city-council-over-northwest-detention-center/>) (last visited Sept. 5, 2018). And one recent protest even resulted in several arrests when a  
 25 group of people surrounded a local police officer's car outside NWDC. Kenny Ocker, *10 Arrested Outside*  
*Northwest Detention Center, Tacoma Police Say* (<https://www.kiro7.com/news/south-sound-news/10-arrested-outside-northwest-detention-center-tacoma-police-say/777884865>) (last visited Sept. 5, 2018). Many of these  
 26 protests focus on GEO's for-profit status, such that the risk of an inadvertent disclosure of information relating to  
 GEO's profitability may well encourage further and more violent protests.

1 or a factfinder has found that GEO is liable to pay restitution to the State. As the Court is aware,  
 2 this issue is novel, and GEO has raised numerous defenses against the State's ability to recover  
 3 restitution for unjust enrichment.

4 A court may bifurcate proceedings under Federal Rule of Civil Procedure 42(b). That  
 5 Rule allows a court to order a “separate trial of one or more separate issues [or] claims” in order  
 6 to promote “convenience, to avoid prejudice, or to expedite and economize.” A decision to  
 7 bifurcate under Rule 42(b) is within the court’s discretion. *Cty. v. Travelers Indem. Co.*, No.  
 8 C14-1957, 2015 WL 4878011, at \*2 (W.D. Wash. Aug. 14, 2015). Bifurcating a case into  
 9 liability and damage phases is one common approach. *Estate of Diaz v. City of Anaheim*, 840  
 10 F.3d 592, 603 (9th Cir. 2016) (finding district court abused its discretion by refusing to bifurcate  
 11 liability and damages when testimony relevant only to damages was prejudicial on liability);  
 12 *Allstate Ins. Co. v. Breeden*, 410 F. App’x 6, 9 (9th Cir. 2010) (upholding bifurcation of damages  
 13 and liability proceedings when “liability … was a dispositive issue” and verdict “obviated the  
 14 need for a jury trial … for damages”); *De Anda v. City of Long Beach*, 7 F.3d 1418, 1421 (9th  
 15 Cir. 1993); *see also Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 961 (9th Cir. 2001) (“One favored  
 16 purpose of bifurcation is to … avoid[] a difficult question by first dealing with an easier,  
 17 dispositive issue”).

18 Bifurcating proceedings may also warrant staying discovery on issues that are only  
 19 relevant to a subsequent stage. Thus, for example, this Court has stayed discovery into a  
 20 plaintiff’s bad faith claim when the defendant’s contract-based defense was discrete and  
 21 potentially dispositive. *Karpenski v. Am. Gen. Life Cos., LLC*, 916 F. Supp. 2d 1188, 1190  
 22 (W.D. Wash. 2012). Another court stayed discovery into a defendant’s net worth when that  
 23 information would be relevant only after liability was specifically established. *Ziemkiewicz v.*  
 24 *R+L Carriers, Inc.*, Civ. No. RDB-13-0048, 2013 WL 2299722, at \*2 (D. Md. May 24, 2013).

25 To the extent NWDC’s profitability is relevant to any issue in this case—and it is not—  
 26 it will be relevant only to the amount of any award against GEO and not to GEO’s underlying

1 liability. That liability will turn entirely on other evidence relating to the proper scope of GEO's  
 2 legal obligations, the proper construction of its contract, and its performance of that contract in  
 3 compliance with ICE's direction. Because establishing liability will not involve any information  
 4 relating to NWDC's profitability, the Court can easily bifurcate proceedings and stay disclosure  
 5 of that information unless and until GEO is found to be liable.

6 Other courts have used similar procedures. *Physicians Healthsource, Inc. v. Janssen*  
 7 *Pharmaceuticals, Inc.*, for example, involved a Telephone Consumer Protection Act ("TCPA")  
 8 claim relating to a fax that provided drug information. No. 12-2132(Flw), 2014 WL 413534,  
 9 at \*1 (D.N.J. Feb. 4, 2014). The parties disputed whether the fax was informational or an  
 10 advertisement, which affected whether sending the fax violated the TCPA. *Id.* Because that  
 11 determination raised a "narrow, potentially dispositive issue" that could be settled with limited  
 12 discovery, and because discovery on that issue would not "significant[ly] overlap" with the  
 13 remaining merits issues, bifurcation was an efficient means to resolve the case. *Id.* at \*4-5. The  
 14 Ninth Circuit has approved a similar approach. *See Danjaq LLC v. Sony Corp.*, 263 F.3d 942  
 15 (9th Cir. 2001).

16 The same procedure would work here. Both of the State's claims pose a narrow question  
 17 regarding liability: is GEO required to comply with a state wage law or pay some other "fair  
 18 wage" when it administers the VWP in accordance with ICE's contract terms and governing  
 19 policies? While the parties disagree on the answer, settling that disagreement does not turn on  
 20 any of the voluminous records the State now seeks from GEO; it turns on the proper  
 21 interpretations of federal and state statutes, federal regulations and policies, and the terms of a  
 22 contract. These issues can be settled with limited evidence, offering the Court an easily separable  
 23 issue that can be resolved quickly and efficiently before any exhaustive review of GEO's  
 24 financial records even becomes relevant. *See Danjaq LLC*, 263 F.3d at 961.

25 On the other hand, forcing GEO to disclose corporate financial information now creates  
 26 the constant risk of its misuse through prejudicial disclosures to the public or a jury about GEO's

1 “profits” as a result of wrongdoing. The State has offered no logical link between GEO’s  
 2 finances and any legal liability for unjust enrichment. The State claims it seeks “damages” that  
 3 are “untethered” to the MWA, State’s Opp to GEO’s Mot. To Dismiss, ECF 17, at 20 n.6, but if  
 4 so, its claim is unmoored from any standard at all. The State has essentially admitted this  
 5 problem by trying to distinguish between a wage action and the State’s unjust enrichment action.  
 6 Dep. of Colleen Melody, 163:9-15 (claiming that the State’s unjust enrichment claim turns on  
 7 GEO’s alleged authority to pay more than the “floor set by law”). The State has further explained  
 8 that it intends to give GEO’s information to an expert for a “precise calculation” about “the  
 9 amount of the unjust enrichment,” but has never explained the connection between profitability  
 10 and liability for unjust enrichment. *Id.* at 171: 1-10. As noted, GEO’s pleadings make it clear  
 11 that the State’s unjust enrichment claim seeks only the difference between a “fair wage” and \$1  
 12 per day per detainee.

13 Allowing the State to use profitability to establish liability for unjust enrichment would  
 14 give it free rein to shake down employers as it pleases. On the State’s logic, any Washington  
 15 commercial entity could be accused of unjust enrichment whenever the State alleges that it is too  
 16 profitable. Given that the State has already claimed—and that this Court has agreed—that it is  
 17 not subject to any statutes of limitations, the State’s theory would amount to a breathtaking  
 18 amount of prosecutorial power: the State could sue any company it wishes, investigate its  
 19 finances, and seek to force it to pay the State an award if it decides that that company “can pay  
 20 [its employees] more.” *See* Dep. of Melody Colleen, 127:7. That is not the law, and the Court  
 21 should not sanction discovery that advances such a theory.

22       **3. Washington’s Reply**

23 GEO argues its financial information is irrelevant to Washington’s claims and that  
 24 producing it now would be prejudicial and inefficient. GEO’s arguments are unpersuasive and  
 25 its effort to postpone all discovery regarding its financial benefit from detainee labor impedes  
 26

1 Washington's ability to litigate its unjust enrichment case in chief. The Court should compel  
 2 GEO to produce its financial information and documents within 10 days.

3           **a. GEO's Financial Information and Documents Are Relevant To  
                  Washington's Unjust Enrichment Claim and to the Calculation of  
                  Profits GEO Must Disgorge**

5           GEO's benefit from detainee labor at NWDC – and the financial information and  
 6 documents that prove and quantify it – are relevant to liability and calculating disgorgement.

7           First, the requested financial information is necessary to prove unjust enrichment liability  
 8 itself. Unjust enrichment is an equitable claim arising from a contract "implied in law;" courts  
 9 evaluate the "benefit" and value of the labor provided, from the perspective of "the receiver of  
 10 the benefit," to determine if it is unjust for the beneficiary to retain it and, if so, what  
 11 disgorgement is required to set things right. *Young*, 191 P.3d at 1262, 1265. Here, GEO denies  
 12 that it receives *any* benefit from the work of the detainees at NWDC or that the work is even  
 13 "necessary to run the facility." *See, e.g.*, GEO's Response, *supra* at 4. As such, the "benefit" to  
 14 GEO of detainee labor at NWDC is directly at issue. Washington is entitled to GEO's financial  
 15 documents and information to prove benefit and quantify the *amount* of the benefit detainee  
 16 workers have provided GEO. Such documents are necessary not only to prove GEO obtained a  
 17 benefit from detainee workers' labor, but also are necessary in considering whether it is "unjust"  
 18 for GEO to retain the financial benefit – a liability question.

19           Washington seeks NWDC financial documents to track the financial benefit to GEO of  
 20 its practice of employing detainees and paying them food or \$1/day for work, instead of paying  
 21 them a fair wage or hiring outside workers. The discovery sought here is necessary to prove and  
 22 quantify the reduction of wage costs (\$1/day or food instead of fair wages) and how those savings  
 23 increased GEO's value, profitability, and expanded its business.

24           As such, Washington is entitled to discover the "benefit" to GEO in the form of its  
 25 increased profits derived from the unfair labor practice. "A person has been unjustly enriched  
 26 when he has profited or enriched himself at another's expense, contrary to equity." *Cox v.*

1     *O'Brien*, 206 P.3d 682, 688 (2009) (citing *Dragt v. Dragt/DeTray, LLC*, 161 P.3d 473, 482  
 2 (2007)). Because GEO is paid on the basis of a per diem contract, any savings on operational  
 3 costs, such as avoiding fair market labor costs necessary to run the facility, allows GEO to keep  
 4 more of each per diem rate payment for itself. GEO has reinvested this in the NWDC (increasing  
 5 bed capacity) and other parts of its business, all of which increase overall profits. While GEO  
 6 denies any “profits from the [VWP] program itself,” GEO’s Response, *supra* at 4, as a result of  
 7 GEO’s own accounting and bookkeeping choices, Washington must conduct a more holistic  
 8 analysis to understand how its labor practices benefit the NWDC’s bottom line.

9                 In unjust enrichment cases, courts have compelled financial “documents relevant to the  
 10 benefit [defendant] allegedly received.” *See Am. KUSA Corp. v. Advantus Corp.*, No. CV 08-  
 11 3100-VBF(RCX), 2009 WL 10674756, at \*3 (C.D. Cal. Sept. 29, 2009) (citing *United States ex*  
 12 *rel. Purcell*, 238 F.R.D. 321, 324 (D.C. D.C. 2006) (“defendants’ profit … is not only [relevant,]  
 13 … but it is patently central to the [plaintiff’s] claims.”); *State Farm Mut. Ins. Co. v. CPT Med.*  
 14 *Servs., P.C.*, 375 F. Supp. 2d 141, 156 (E.D. N.Y. 2005) (financial records relevant to profit)).

15                 Second, quantification of the amount of unjust enrichment is necessary for the remedy of  
 16 disgorgement. The fair market value of the detainee labor is a central part of the analysis, but  
 17 disgorgement of “unjust enrichment” must be for the full value by which the labor enriched the  
 18 beneficiary. *See Young*, 191 P.3d at 1258, 1265 (owner “must disgorge the entire value of the  
 19 benefit she received as determined by either the fair market value of the services rendered or the  
 20 amount the improvements enhanced the value of the property”). The remedy may include  
 21 disgorging “wrongfully obtained profits.” *Staff Builders Home Healthcare, Inc. v. Whitlock*, 33  
 22 P.3d 424, 426 (2001). Here, the benefit to GEO from detainee labor includes, at a minimum, the  
 23 fair market value differential between a fair wage and what was paid (\$1/day or food). However,  
 24 the difference between a fair wage and what GEO paid is not the only factor to be considered  
 25 when determining the scope of benefit the GEO received from its unfair labor practices. Indeed,  
 26 the amount of the profit GEO derived and retained from detainee labor at the NWDC and the

1 financial boon it received from its unfair labor practices are also part of the benefit that GEO  
 2 received. It is undisputed that NWDC and GEO did make and retain profits, and Washington is  
 3 entitled to discovery of the full “amount by which it has been unjustly enriched” by detainee  
 4 labor to pursue its prayer for relief that GEO be ordered to disgorge it. ECF 1-1 ¶7.6. “Plaintiffs  
 5 are entitled to discovery regarding their theory of recovery.” *Gabriel Techs. Corp. v. Qualcomm,*  
 6 *Inc.*, No. 08CV1992 AJB MDD, 2012 WL 3150604, at \*3 (S.D. Cal. Aug. 2, 2012) (allowing  
 7 discovery of financial records to determine amount to be disgorged in unjust enrichment suit).

8 Third, GEO wrongly asserts that Washington’s liability case revolves around GEO’s  
 9 contract with ICE. *See* GEO’s Response, *supra* at 24 (liability evidence relates “to the proper  
 10 scope of GEO’s legal obligations, the proper construction of its contract, and its performance of  
 11 that contract in compliance with ICE’s direction;” “proper interpretations of federal and state  
 12 statutes, federal regulations and policies”). This argument misses the mark. In fact, the unjust  
 13 enrichment liability case revolves around GEO’s implied in law contract with the detainees, not  
 14 GEO’s contract with ICE. Financial documents are relevant to the actual liability theory in this  
 15 case.

16 Finally, GEO attempts to dodge accountability altogether by questioning the legitimacy  
 17 of Washington’s use of its prosecutorial law enforcement authority and claiming Washington is  
 18 suing GEO, and can “shake down” any business, simply because it is “too profitable.” *See* GEO’s  
 19 Response, *supra* at 25. GEO fails to identify any evidence of prosecutorial misconduct. This is  
 20 a law enforcement case arising from GEO’s own longstanding, unjust, and unfair labor practices.  
 21 *See* Complaint, ECF 1-1 at ¶¶ 4.4-4.5, 4.9, 6.3-6.6. (GEO “utilizes detainee labor to operate  
 22 NWDC,” and pays detainees in food or \$1/day, instead of the “adequate compensation,”  
 23 “minimum wage,” or a “fair wage” that it should have paid). Washington seeks only what is fair  
 24 and the remedy that is available under the common law: “disgorgement of unjust enrichment.”  
 25 *Id.* at ¶ 7.6.

26

1                   **b. Disclosure of GEO's Financial Documents Would Not Prejudice  
2                   GEO**

3                   GEO claims that allowing discovery into its financial information will inflame  
4                   community-based protests against it and the for-profit prison industry. GEO's Response, *supra*  
5                   at 22, fn. 2. But GEO's corporate profits are no secret. GEO is publicly traded on the New York  
6                   Stock Exchange and reports its overall annual financials on its website. *See* The GEO Group,  
7                   Inc. 2001-17 Annual Reports, <http://investors.geogroup.com/FinancialDocs> (last checked Sept.  
8                   18, 2018).

9                   Washington simply seeks to obtain financial information specific to the legal claims at  
10                  the heart of this case: GEO's unjust benefit from detainee labor at the NWDC. GEO can produce  
11                  responsive documents – to the extent necessary – pursuant to the terms of the Protective Order.  
12                  GEO's profitability is requisite information to understand the extent of its enrichment and  
13                  calculate the disgorgement that justice demands must occur. GEO cannot credibly claim to be  
14                  prejudiced if Washington obtains, and uses, GEO's own financial documents to prove the  
15                  elements of its unjust enrichment claim. As GEO's financial information can – inasmuch as is  
16                  necessary – be shielded by the Protective Order, and is needed to prove liability and calculate  
17                  the remedy for Washington's unjust enrichment claim, there is no harm or prejudice to GEO in  
18                  producing it.

19                   **c. Bifurcation Would Cause Prejudice and Is Inefficient**

20                  In a last ditch attempt to shield its financial information, GEO, alternatively, argues for  
21                  two additional procedural delays: bifurcation of trial and a stay of discovery on remedies.  
22                  However, the facts related to GEO's benefit from detainee labor at the NWDC are squarely at  
23                  issue in both the liability and remedy aspects of Washington's case. Here, where there is a  
24                  complete overlap of factual issues, bifurcation of the trial and delay of discovery of financial  
25                  information essential to the liability phase until after the liability phase would rob Washington  
26                  of information critical to its ability to prove its case. Bifurcation in this instance is also an affront

1 to judicial economy and would prejudice Washington, as it would require two periods of  
 2 overlapping discovery and two duplicative trials that would draw this matter out for years. As  
 3 bifurcation would not promote convenience, expedite or economize the proceedings, and itself  
 4 would cause prejudice, it meets none of the standards of Federal Rule of Civil Procedure 42(b)  
 5 and GEO's motion for bifurcation should be denied.

6 **B. GEO's "Offset" Affirmative Defense**

7 In discovery, Washington also seeks financial information and documents about GEO's  
 8 "Offset" affirmative defense. Specifically:

9       **INTERROGATORY NO. 8:** For each year from 2005 to the present,  
 10 please state the amount and basis for the amount of GEO's claimed offset,  
 11 including GEO's calculation in its Initial Disclosures: "Offset: \$17.12 per hour  
 12 of participation in the Voluntary Work Program."

13       **RESPONSE TO NO. 8:** GEO objects to this Interrogatory to the extent  
 14 that it seeks that information protected by the attorney-client privilege, the work  
 15 product doctrine, the common interest privilege, and/or any other applicable  
 16 privileges or immunities. GEO further objects on the grounds that the  
 17 Interrogatory is unduly burdensome, as it would require GEO to continuously  
 18 supplement and amend its response without a defined end date. Subject to and  
 19 without waiving the above stated objections, GEO answers as follows: The  
 20 formula is described in its Initial Disclosures and the data used in calculating the  
 21 offset come from the budget and actual expenditures of the NWDC. The rate of  
 22 \$17.12 has been established based on (1) GEO's calculation of \$28.12 as cost per  
 23 detainee; (2) less the \$1 dollar per day detainee participants are compensated for  
 24 their participation in the VWP; and (3) less the \$10 dollars per hour for the  
 25 balance of the allegedly applicable minimum wage. GEO seeks an offset to  
 reimburse ICE for ICE expenditures providing for detainees essential living  
 expenses while earning minimum wages in ICE's VWP as GEO will pass on any  
 increased VWP payments to ICE by way of an equitable adjustment. Pursuant to  
 Fed. R. Civ. P. 33(d), GEO will produce documents that state and describe the  
 total expenditures for the relevant period that serve as the basis for the amount of  
 GEO's claimed offset. Documents that are referenced in, support, or form the  
 basis for GEO's response to this Interrogatory are forthcoming and will be  
 produced in response to Plaintiff's Request for Production No. 19. Following  
 production, GEO will provide Bates number references for the documents  
 produced in response to this Interrogatory.

26       **REQUEST FOR PRODUCTION NO. 19:** Please produce all  
 27 documents that are referenced in, support, or that form the basis of Your response  
 28 to Interrogatory No. 8.

**RESPONSE TO NO. 19:** GEO objects to this Request on the grounds that it is unduly burdensome as it seeks “all documents . . . that form the basis” for GEO’s response to Interrogatory No. 8, where documents sufficient to show the amount and basis of GEO’s claimed offset would be reasonable and complete. Likewise, GEO objects to the Request as not proportionate to the needs of the case, as discovery of “all documents” that form the basis of the claimed offset does nothing to resolve any issue in the case and any burden on GEO would outweigh the negligible benefit Plaintiff would receive from the information. GEO objects to this Request to the extent that it seeks that information protected by the attorney-client privilege, the work product doctrine, the common interest privilege, and/or any other applicable privileges or immunities. GEO also objects to this Request as overly broad and unduly burdensome as Interrogatory No. 8 has no defined end date and requires GEO to continuously supplement its responses. Subject to and without waiving GEO’s above stated objections, GEO will conduct a reasonable search of documents on active electronic systems and reasonably accessible paper storage areas that GEO reasonably believes contain potentially relevant information within its possession, custody, and control, to the extent they exist, have not already been produced, and subject to the protective order entered in this case, produce relevant, responsive, non-privileged documents sufficient to show the amount and basis of GEO’s claimed offset created from 2005 to January 5, 2018. In addition, GEO has already produced three responsive documents: GEO- State 19281, GEO-State 19283, and GEO-State 19286. GEO is withholding documents on the basis of the above stated objections.

### 1. Washington’s Argument

GEO alleges an offset affirmative defense to Washington’s unjust enrichment award for “costs incurred for caring for plaintiffs during their time in detention.” ECF 34, page 7 at ¶8.12, *as modified by Order on State’s Motion to Dismiss or Strike Defendant’s Counterclaims and Affirmative Defenses*, ECF 44, at 5-6 (removing first clause). In discovery, GEO quantifies its offset at “\$17.12 per hour of participation in the Voluntary Work Program.” Brenneke Decl. ¶ 6, Ex. D (Resp. to Int. 8).

Washington seeks full discovery of the underlying documents that provide the basis for GEO’s offset affirmative defense. Brenneke Decl. ¶ 5, Ex. C (RFP 19). In response, GEO produced three summary documents to support its quantification of the offset and indicated it would produce all documents sufficient to show the amount and basis for the offset calculations. See Brenneke Decl. ¶ 6, Ex. D (Resp. to RFP 19). Later, after Washington requested the underlying documents again in a CR 37 letter, counsel for GEO changed course and refused to

1 produce them. *Id.* at ¶11, Ex. G (Washington’s August 23, 2018 letter); *Id.* at ¶13, Ex. I (GEO’s  
 2 August 23, 2018 letter). These documents are unquestionably discoverable and the Court should  
 3 order GEO to produce them.

4 In addition, GEO’s finances and profits at issue in Section A, *supra*, also are relevant to  
 5 GEO’s offset affirmative defense to Washington’s unjust enrichment claim, as they are  
 6 circumstances that either make it unjust for GEO to retain the benefit without payment, *see*  
 7 *Young v. Young*, 191 P.3d at 1262, or require an offset. GEO focuses on the *costs* incurred for  
 8 caring for detainees during their time in detention, but that is only one side of the equation. To  
 9 defend against the offset, and retain the equitable nature of the unjust enrichment remedy of  
 10 which it is a part, Washington is entitled to full discovery related to the care of the detainees  
 11 under the terms of its “per diem” GEO-ICE NWDC contract: the costs, the revenues and  
 12 reimbursements GEO receives from ICE, and the profits earned. To ensure that any offset  
 13 analysis is equitable, the Court should compel GEO to produce all of its financial and profit  
 14 records regarding the benefit it retained from the NWDC and its VWP since 2005, including the  
 15 costs, revenues and profits it derived from the care for detainees.

16       **2.     GEO’s Response**

17       The State’s arguments in support of its motion to compel the production of GEO’s  
 18 financial and profit records based on GEO’s Offset affirmative defense are moot and should be  
 19 disregarded. On September 14, 2018, GEO filed a Notice of Volunteer Dismissal of Offset  
 20 Affirmative Defense. Prior to filing the Notice of Volunteer Dismissal of Offset Defense,  
 21 GEO met and conferred with the State regarding this issue, and the State indicated that they  
 22 had no objection to GEO’s voluntary dismissal of its Offset affirmative defense. As a result,  
 23 the State’s arguments in support of its motion to compel that are based on GEO’s Offset  
 24 affirmative defense are moot and should be disregarded.

1           **3. Washington's Reply**

2           In light of GEO's dismissal of its offset affirmative defense, Washington respectfully  
3           requests this Court grant the Motion to Compel GEO's financial information and documents on  
4           the basis of Washington's unjust enrichment claim alone.

5           Dated this 18<sup>th</sup> day of September, 2018

6           Respectfully submitted,

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## CERTIFICATION

I certify that the full response by the responding party has been included in this submission, and that prior to making this submission the parties conferred to attempt to resolve this discovery dispute in accordance with LCR 37(a).

Dated: September 18, 2018

s/ Andrea Brenneke  
ANDREA BRENNEKE

## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was electronically filed with the United States District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: September 18, 2018

s/Andrea Brenneke  
ANDREA BRENNEKE